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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 52

UNITED STATES OF AMERICA, APPELLANT

v.

LUDENIA HOWARD, TRADING AS STOKES FISH CO.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, ORLANDO DIVISION

BRIEF FOR THE UNITED STATES

OPINION BELOW

The order of the District Court (R. 3) quashing the information has not been reported.

JURISDICTION

On December 29, 1955 the District Court entered an order quashing the information and discharging defendant on the ground that the information did not charge an offense under the Federal Black Bass Act, as amended (R. 3). A notice of appeal to this Court was filed in the District Court on January 27, 1956 (R. 4, 5), and this Court noted probable jurisdiction on June 11, 1956 (R. 5). Jurisdiction of this Court to review on direct appeal the decision of the District Court, quashing the information on the ground that

it did not charge a crime within the meaning of the statute on which it was founded, is conferred by 18 U. S. C. 3731.

QUESTION PRESENTED

Whether the District Court erred in construing the term "law of the State," as used in the Federal Black Bass Act (which prohibits interstate transportation of black bass and other fish if such transportation is contrary to the law of the state from which the fish is transported), not to include regulations issued by the Florida Game and Fresh Water Fish Commission, where (1) the Commission was created by a Florida constitutional amendment which vested it with sole authority to regulate transportation of fresh water fish in Florida and (2) the constitutional amendment provided that the legislature could pass laws in aid of the provisions of the amendment but not inconsistent therewith.

FEDERAL STATUTES AND STATE CONSTITUTION, STATUTES, AND REGULATIONS INVOLVED

The pertinent provisions of 18 U. S. C. 3731 and the federal act to regulate the interstate transportation of fish, the so-called Black Bass Act of May 20, 1926, as amended, c. 346, 44 Stat. 576, 46 Stat. 845, 61 Stat. 517, 66 Stat. 736, 16 U. S. C. 851 to 854 are set out in Appendix A, *infra*, pp. 39–42.

The applicable provisions of the constitution of Florida, Florida statutes, and the regulations of the Florida State Game and Fresh Water Fish Commission are set forth in Appendix B, *infra*, pp. 43–50.

Federal statutes analogous to the Black Bass Act are the acts which regulate the interstate transportation of wild animals or birds, Act of June 25, 1948, c. 645, 62 Stat. 687, 18 U. S. C. 43, 44 and the Act of July 3, 1918, c. 128, Section 4, 40 Stat. 755, 49 Stat. 1556, 53 Stat. 1433, 16 U. S. C. 705. Pertinent sections of these statutes are set forth in Appendix C, *infra,* pp. 51–53.

STATEMENT

In the United States District Court for the Southern District of Florida, a criminal information was filed against appellee on July 20, 1955 (R. 1, 2), charging that on or about May 16, 1955 at Sanford, Seminole County, Florida, in the Southern District of Florida, "Ludenia Howard, trading as Stokes Fish Co., delivered to the Railway Express Agency, Inc., for transportation from Sanford, in the State of Florida, to Macon, in the State of Georgia, 150 pounds of fresh water bream, fresh water crappie, and fresh water black bass, and such transportation was then and there contrary to the laws of the State of Florida; in violation of Section 852, Title 16, United States Code." The cited statute, originally known as the Federal Black Bass Act, though it has been amended to apply to all fish, *infra,* pp. 39–42, makes it an offense for any person (including any company, partnership or corporation) knowingly to transport, or to deliver for transportation in interstate or foreign commerce, any black bass or other fish, if such transportation is contrary to the law of

the state from which the fish is or is to be transported. Sections 1, 2, and 7, Act of May 20, 1926, as amended, Appendix A, *infra*, pp. 39–42.[1]

Appellee moved to quash the information on the grounds that it failed to allege that she personally delivered the fish for transportation or had any personal connection with the transaction in any way, or that she had any knowledge of the nature of the shipment or any knowledge of the transaction. The motion also included the standard averment that the information failed to state a cause of action against appellee (R. 2).

The District Court quashed the information on the ground that there is no law of the State of Florida prohibiting the transportation of the fish described in the information, "the only prohibition against the same being the rules of the State Game and Fresh Water Fish Commission; and it being the further opinion of the Court that the rules and regulations of the said Game and Fresh Water Fish Commission do not constitute the law of the State of Florida as described by and contemplated in section 852, Title 16, United States Code * * *" (R. 3).

The Game and Fresh Water Fish Commission of Florida was created in 1942 by a constitutional amendment (Article IV, Section 30, Constitution of Florida), *infra*, pp. 43–44, which provides that "from and after January 1, 1943, the management, restoration, conser-

[1] Section 2 of the Act also forbids the transportation or delivery for transportation if the fish has been either "caught, killed, taken, sold, purchased, possessed, or transported, at any time, contrary to the law of the State * * *."

vation and regulation of the birds, game, fur bearing animals, and fresh water fish of the State of Florida, and the acquisition, establishment, control and management, of hatcheries, sanctuaries, refuges, reservations, and all other property now or hereafter owned or used for such purposes by the State of Florida, shall be vested in [the] Commission * * *". The Amendment gave the Commission "power to fix bag limits and to fix open and closed seasons, on a statewide, regional or local basis, as it may find to be appropriate, and to regulate the manner and method of taking, transporting, storing and using birds, game, fur bearing animals, fresh water fish, reptiles, and amphibians". The Amendment also provided that "The Legislature may enact any laws in aid of, but not inconsistent with, the provisions of this amendment, and all existing laws inconsistent herewith shall no longer remain in force and effect. All laws fixing penalties for the violation of the provisions of this amendment and all laws imposing license taxes, shall be enacted by the Legislature from time to time."

In accordance with these latter provisions for setting of penalties and license taxes, Section 372.83 of the Florida Statutes Annotated (Laws 1943, c. 21945, Section 6, as amended, *infra*, p. 46) makes it a misdemeanor to violate "any rule, regulation or order of the game and fresh water fish commission adopted pursuant to § 30, article 4, of the constitution of this state." Likewise, Section 372.65 of the Florida Statutes Annotated (Laws 1929, c. 13644, § 31, as amended, *infra*, pp. 46–47) sets license fees for fresh water fish dealers and provides that application for such li-

shall be made to the commission of game and fresh water fish. Sections 372.68 and 372.69 (Laws 1929, c. 13644, § 63, and § 22, as amended, *infra*, pp. 47–48) provide for monthly reports by fresh water fish dealers on the amounts of fish sold, which reports must be made on forms furnished by the commission.

Implementing the constitutional amendment, Section 372.021 of the Florida Statutes Annotated (Laws 1943, c. 21945, Sections 4 and 5), *infra*, pp. 44–46, authorizes the Game and Fresh Water Fish Commission to exercise "the powers, duties and authority granted by Section 30, article IV, of the constitution of Florida, by the adoption of rules, regulations and orders," and prescribes the procedure for promulgation of the Rules.

On July 19, 1954, the Commission by formal resolution determined the Sections of the Florida Statutes mentioned in the preceding two paragraphs. (*viz.*, Sections 372.83, 372.65, 372.68, 372.69 and 372.021), as well as several other related acts of the Florida legislature, "to be in aid of and not inconsistent with the Rules and Regulations of the Game and Fresh Water Fish Commission and the same are hereby specifically adopted and confirmed both as Rules and Regulations of the Game and Fresh Water Fish Commission and valid and constitutional statutory enactments of the Legislature of the State of Florida."

Pursuant to the constitutional amendment's provision that the Legislature "may enact any laws in aid of, but not inconsistent with, the provisions of this amendment," and that "all existing laws inconsistent

herewith shall no longer remain in force and effect," the Legislature in 1951 repealed various statutes which had regulated the seasons, methods of catching, and bag limits of black bass, as well as the statute (Section 372.29, Florida Statutes Annotated, Laws 1929, c. 13644, Section 35) which had prohibited the sale or transportation of black bass out of Florida. These matters are now covered by the Rules of the Game and Fresh Water Fish Commission. Thus, Rule 14.01 of the Commission's Rules and Regulations, *infra,* pp. 48–49, now prohibits, except as therein otherwise provided, the transportation of black bass and other species of fresh water fish out of Florida.

SUMMARY OF ARGUMENT

I

The decision of the District Court rested on the sole ground that the regulations of the Florida Fresh Water Fish Commission do not constitute the "law of the State" within the meaning of the Federal Black Bass Act, prohibiting the transportation of fish in interstate commerce if such transportation is contrary to the law of the state. Hence, an appeal was properly taken to this Court under 18 U. S. C. 3731. The fact that appellee, in her motion to quash, also attacked the indictment on other grounds is immaterial. The ground of decision of the District Court is determinative as to the right of appeal to this Court. *United States* v. *Carroll,* 345 U. S. 457, 459, footnote.

II

A. The term "law of the State" as used in the Black Bass Act—forbidding transportation of fish in interstate commerce if such transportation is contrary to the law of the state where the shipment originates—means whatever law the state properly considers binding on persons within the state. That is its ordinary meaning; for fifty years prior to the enactment of the Black Bass Act in 1926, this Court had consistently interpreted "law of the state" to include any "enactment, from whatever source originating, to which a State gives the force of law" (*Williams* v. *Bruffy*, 96 U. S. 176, 183), and the courts have almost uniformly treated a valid regulation as "law."

B. The regulations of the Florida Fish Commission are binding law in Florida with respect to the transportation of fresh water fish. Authority to promulgate regulations which will have the force of law is conferred on the Commission and taken away from the legislature by the Florida constitution. This grant of authority has been implemented by legislation authorizing the Commission to exercise its powers and punishing violations of the regulations. The Supreme Court of Florida, which has final authority in interpreting the law of Florida, has declared that the regulations of the Commission are the law of Florida. E. g., *Bronson* v. *Florida*, 83 So. 2d 849.

Even without the special force of the Florida constitution in conferring power on the Commission, the regulations, issued by a state commission pursuant

to authority conferred upon it by the legislature and implemented by punitive legislation passed by the legislature, would be the "law of the state." Indeed, since the Florida legislature has passed a law making the violation of the regulations a crime, there is a "law of the state" forbidding the transportation, even on the District Court's narrow theory that a "law" must be one enacted by the state legislature.

III

That the phrase "law of the State", as used in the Black Bass Act, includes laws issued by state conservation commissions acting under proper authority becomes even clearer when the federal statute is considered in full context, in relation to its place in the federal conservation program, and in the light of its legislative history. The Act is on its face designed to strengthen state control in the area where state control must necessarily be weakest, *i. e.* interstate activity. The fact that other conservation legislation follows the same pattern likewise shows that such was its purpose. And the legislative history both of the original act of 1926, which was limited to black bass, and of the 1947 and 1952 amendments, which extended it to all fish, confirms this objective. There is nothing in the language of the Act to suggest that it was designed to aid only the comparatively few states which operate their conservation program through action by the legislature alone, without delegation of authority to various commissions. Rather, it is clear that the statute was designed to aid the conservation

programs of all the states, no matter how those programs are promulgated or administered.

This manifest purpose would be all but nullified under the narrow construction of the District Court. Available studies indicate that in only six states is full regulatory authority over fish exercised solely by statute. What is termed "full" regulatory authority is vested in 28 states in commissions. Twelve states divide responsibility between legislature and commission. Thus, the aim of the Act to buttress the states' conservation programs would be very largely defeated under the lower court's interpretation of "law of the state."

IV

No lack of due process results from recognition of the Florida Commission's Rules as the law of Florida. Appellee's complaint that the rules may fluctuate arbitrarily, and are difficult of ascertainment, does not go to the only question here involved—whether any regulations of a state commission can ever be the law of the state within the purview of the federal statute—and therefore is not properly raised at this time.

The contention is, in any event, without merit in this case. The rule forbidding transportation of black bass has been in effect since the founding of the Florida Commission. Before that, such transportation was forbidden by Florida statute since 1927. Thus, there has been, in fact, no "vacillating rule". And

were the rule to be changed, there is elaborate machinery provided for effective notice to the public, notice which is probably considerably more effective than that used in promulgation of statutes.

Moreover, it is evident from the amounts charged in this information that appellee is a commercial dealer in fish. As such, she was required to be licensed. The form of license carries the legend that no black bass is permitted to be on the premises where such business is conducted. The license also states that a holder engaged in the taking of fish must hold a valid fishing license. Section 372.69 of the Florida statutes requires that fishing licenses shall contain on the back thereof a synopsis of the fresh water fishing laws of the state. In short, no one interested in obeying the law would have any difficulty in discovering the applicable regulations.

ARGUMENT

I. SINCE THE DISTRICT COURT BASED ITS DECISION SOLELY ON A CONSTRUCTION OF THE STATUTE, THE APPEAL IS PROPERLY WITHIN THE JURISDICTION OF THIS COURT

As the order of the District Court shows (R. 3), that court announced, as its sole reason for dismissing the information, that the Rules of the Game and Fresh Water Fish Commission of the State of Florida "do not constitute the law of the State of Florida as described by and contemplated in Section 852, Title 16, United States Code * * *" (prohibiting transpor-

tation of fish in interstate commerce, if such transportation is contrary to the law of the state). Despite this fact, appellee, in her motion to dismiss or affirm, challenged the jurisdiction of this Court to consider the District Court's ruling on the ground that her motion to dismiss in the District Court had raised other issues, such as the sufficiency of the indictment as a pleading, which she claims would also support the judgment of dismissal (Motion, pp. 15–16).

18 U. S. C. 3731 (Appendix A, *infra*, p. 39) authorizes an appeal to this Court when the "decision or judgment" is based on a construction (or the validity) of the statute upon which the information is found. It is the ground of decision of the District Court, not the defendant's motion, which is determinative. *United States* v. *Carroll*, 345 U. S. 457, at 459, footnote; *United States* v. *Gilliland*, 312 U. S. 86, 89; *United States* v. *Borden Co.*, 308 U. S. 188. Were it otherwise, every case in which there was pleaded, in the motion to dismiss, any issue other than the construction or validity of the statute would be effectively barred from direct review under 18 U. S. C. 3731, even though the decision was based solely on construction or validity. It is obvious that this would negate the purpose and effect of the direct-appeal statute, as construed by this Court.[2]

[2] A different situation, not here involved, is presented when the grounds for the judgment of the District Court are not clear or where the decision of the District Court is based on several grounds, only one of which affords a basis for direct review. *United States* v. *Swift & Co.*, 318 U. S. 442; *United States* v. *Wayne Pump Co.*, 317 U. S. 200.

II. THE REGULATIONS OF THE CONSTITUTIONALLY-CREATED FLORIDA COMMISSION ARE BINDING LAW IN FLORIDA, AND THEY THEREFORE CONSTITUTE THE "LAW OF THE STATE" WITHIN THE PURVIEW OF THE FEDERAL BLACK BASS ACT

Section 2 of the Black Bass Act, 16 U. S. C. 852, (Appendix A, *infra*, pp. 39–40), prohibits the transportation in interstate commerce of fish, if such transportation is "contrary to the law of the State" from which the fish is to be transported. By every pertinent consideration of legislative construction—plain meaning, evident purpose, legislative history, judicial construction—it seems manifest that "law of the State" means whatever law the state properly considers binding on persons within the state. In relation to fresh water fish, the law binding on persons in Florida is, as we show below, the regulation issued by Florida's constitutionally-created Game and Fresh Water Fish Commission. Its regulations are therefore the "law of the State" within the scope of the Black Bass Act.

A. PROVISIONS CONSIDERED BY THE STATE TO BE BINDING ON PERSONS WITHIN ITS JURISDICTION ARE GENERALLY "LAWS OF THE STATE" FOR THE PURPOSES OF FEDERAL LEGISLATION

When a federal statute speaks of the "law of the state", the normal reading of the term would be to construe it as applying to whatever law the state considers binding on persons within that state. "Law of the state" is, on its face, a broader expression than "state statutes" or "enactments of the

state legislature". In its ordinary usage, the former term embraces regulations of duly authorized commissions, having the force and effect of law, and certainly covers regulations which, like those here involved, have by the state constitution and state judicial decision been specifically made the law of the state.

1. The decisions of this Court have consistently given this broad construction to the term "law of the state" as used in federal legislation. Almost fifty years before the enactment in 1926 of the Black Bass Act, the Court said in *Williams* v. *Bruffy*, 96 U. S. 176, 183, "Any enactment, from whatever source originating, to which a State gives the force of law is a statute of the State within the meaning of the clause cited relating to the jurisdiction of this court." There, the "statute" in question was a law passed by the Confederate States vesting in the Confederation all property of alien enemies. This law was given force and effect in Virginia, and Bruffy's administrator successfully defended against a suit on a pre-war contract on the ground that the money owed had been paid under this law to the Confederation. This Court held that, while the organization of the Confederate States had no legal existence, yet its enactment was possessed of whatever efficacy was given it by the individual confederate states, and was thus a statute within the law (now 28 U. S. C. 1257 (2)) conferring jurisdiction on the Supreme Court where the validity of a state statute was challenged as repugnant to the Constitution.

On several occasions thereafter, before the use of the phrase "law of the state" by Congress in the Black Bass Act, the Court construed it as used in the Constitution and in the Acts of Congress granting jurisdiction to this Court. In 1911, in *Grand Trunk Ry.* v. *Indiana R. R. Comm.*, 221 U. S. 400, 403, the Court held: "Observing first, that the order [of the State railroad commission] is a legislative act by an instrumentality of the State exercising delegated authority (*Prentis* v. *Atlantic Coast Line*, 211 U. S. 210, 226), is of the same force as if made by the legislature, and so is a law of the State within the meaning of the contract clause of the Constitution [citing cases], we come to consider whether it does impair the obligation of the contract."

In 1914, *Wadley Southern Ry.* v. *Georgia*, 235 U. S. 651, 660, 661, ruled that "rates made by the General Assembly or administrative orders made by a Commission are both legislative in their nature * * * and any party affected by such legislative action is entitled, by the due process clause, to a judicial review of the question as to whether he had been thereby deprived of a right protected by the Constitution."

In October Term 1918, the Court held in *Lake Erie & W. R. R. Co.* v. *Pub. Util. Comm.*, 249 U. S. 422, 424, that an order of the state public utilities commission, "being legislative in its nature and made by an instrumentality of the State, is a state law within the meaning of the Constitution of the United States and the laws of Congress regulating our jurisdiction," and then found that the order was not in

contravention of the Fourteenth Amendment. During the same term, the Court held in *Arkadelphia Co.* v. *St. Louis S. W. Ry. Co.*, 249 U. S. 134, 141, that it was plain that rate fixing orders of the railroad commission were state laws within the meaning of the statute granting appeal to this Court "in any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States."

2. In addition to this general principle that the term "law of the state" in a federal statute has a broad scope, there is the well-established corollary that regulations issued by a commission pursuant to authority conferred upon it by the legislature have the force and effect of law. This Court has so held as to federal regulations in numerous cases. E. g., *Lilly* v. *Grand Trunk R. Co.*, 317 U. S. 481, 488; *Standard Oil Co. of California* v. *Johnson*, 316 U. S. 481, 484; *Columbia System* v. *United States*, 316 U. S. 407, 417, 418; *Atchison, T. & S. F. Ry. Co.* v. *Scarlett*, 300 U. S. 471, 474. Consonant with such decisions, it has been held that the expression "federal law" generally includes any regulation promulgated by lawful authority, in addition to federal statutes. *Roumanian American Winery, Inc.* v. *Morgenthau*, 152 F. 2d 452, 453 (C. A. 2). Exceptions from that principle must find justification in the special purpose or scope of the enactment using the term "law." Cf. *Phillips* v. *United States*, 312 U. S. 246 ("statute"). As we shall show in detail, no such limitation can be suggested here.

Thus, both before and after the Black Bass Act of 1926, there is a history of interpretation of the phrase "law of the state", as used in the Constitution of the United States and in Acts of Congress, which supports its normal meaning as embracing regulations recognized by the state as having the force and effect of law in that jurisdiction.

B. THE REGULATIONS OF THE FLORIDA COMMISSION ARE BINDING LAW IN FLORIDA

1. In Florida, the regulations of the Game and Fresh Water Fish Commission have been expressly made, to the fullest extent of the state's power to do so, the law of Florida. As it undoubtedly had the right to do, Florida has taken from the legislature the power to regulate this area of the state's natural resources. Unless Florida's power over this subject matter be wholly lost, it must be found in the regulations of the Commission. The Commission's regulations are plainly the "law" of that state.

The Florida constitutional amendment provides:

> * * * the * * * regulation of * * * fresh water fish of the State of Florida * * * shall be vested in a Commission to be known as the Game and Fresh Water Fish Commission. * * * Among the powers granted to the Commission * * * shall be the power to * * * regulate the manner * * * of taking, transporting, storing and using * * * fresh-water fish, reptiles, and amphibians. * * * The Legislature may enact any laws in aid of, but not inconsistent with, the provisions of this amendment, and all existing laws inconsistent herewith shall no longer remain in force and effect

As noted above (*supra,* pp. 5–7), enactments by the Florida legislature implement this provision. 14 F. S. A. Section 372.021 supports this grant of authority by "empowering" the Commission to exercise the powers granted it by the Constitution, and prescribes methods for promulgation of the Commission's regulations. In accordance with the constitutional provision that laws fixing penalties and imposing license taxes are to be enacted by the legislature, 14 F. S. A. Section 372.83 provides that violation of the regulations constitutes a misdemeanor, and 14 F. S. A. Section 372.65 provides for licensing of fish dealers.

The Supreme Court of Florida has consistently held that the power of the Game and Fresh Water Fish Commission is supreme, and that its regulations are the law of Florida. In *Bronson* v. *Florida,* decided January 6, 1956, 83 So. 2d 849, the State Supreme Court rejected the contention that a conservation agent of the Game and Fresh Water Fish Commission lacked power to arrest on the ground of an alleged absence of probable cause to believe that a law of the State, as distinguished from a regulation of the Commission, was being violated. The information had charged Bronson with resisting the agent when he attempted to place him in custody for violating in the officer's presence the *laws* of the State "as fixed by the * * * Game and Fresh Water Fish Commission * * * regulating the manner and method of taking reptiles. * * *" [Emphasis added.] The court reaffirmed earlier pronouncements that the regulations, in their relationship to conflicting statutes on the subject, constituted the "governing law".

To the same effect are Florida decisions which have held that the constitutional amendment divested the legislature of its law-making power with respect to game and fresh water fish, and placed this power in the Commission, and that in areas within the jurisdiction of the Commission the legislature's power to regulate is reduced to an auxiliary one, valid only when consistent with the Commission's regulations. In *Beck* v. *Game and Fresh Water Fish Commission,* 160 Fla. 1, 33 So. 2d 594, the court held that statutes which declared certain waters to be in fact salt (thereby removing them from the jurisdiction of the Game and Fresh Water Fish Commission and placing them under the State Board of Conservation) were void as violative of the constitutional provisions creating the Commission. In *Griffin* v. *Sullivan,* 158 Fla. 870, 30 S. 2d 919; *Price* v. *City of St. Petersburg,* 158 Fla. 705, 29 So. 2d 753; and *Bell* v. *Vaughn,* 155 Fla. 551, 21 So. 2d 31, the court further discussed the unique vesting of supreme law-making power in the Florida Commission.

Sylvester v. *Tyndall,* 154 Fla. 663, 18 So. 2d 892, reviewed the historical background leading up to the constitutional amendment, taking judicial notice of "the many years in which the legislature had tried in vain to adequately deal with the subject matter of this amendment by local or special acts * * *, and the conviction finally arrived at by the legislature and the people that this matter of game and fish conservation and regulation was a statewide problem and one that could only be properly solved by a long range program to be carried into effect by a State

Commission—a new administrative department of the State Government—equipped with powers adequate to the purpose for which it was to be, and was, created." The court noted that it could be held that the constitutional amendment itself authorized the Commission to adopt rules and regulations to effect the purposes of the amendment, and that the statute which implemented the amendment in accordance with the amendment's direction [*viz.*, Chapter 21945, Acts of 1943, formerly 14 F. S. A. 372.82, now 14 F. S. A. 372.021] was therefore likewise constitutionally valid.

In sum, these decisions hold that under the Florida constitution the authority for regulation of fresh water fish in Florida is in the Fresh Water Fish Commission; that this constitutional grant is supported, if that be necessary, by the state statute which again declares that the Commission may exercise the powers granted it by the constitution; and that the Commission's regulations are given sanction by the statute which penalizes violations. The absolute supremacy and sole authority of the Commission's regulations is affirmed without dissent. On the interpretation of the Florida constitution and Florida law regulating its fish and wildlife, the Florida court is, of course, finally authoritative. See *Geer* v. *Connecticut*, 161 U. S. 519, 522; *West* v. *American Telephone and Telegraph Co.*, 311 U. S. 223, 236; *Nashville, C. and St. L. Ry.* v. *Browning*, 310 U. S. 362, 369.

2. Even without the special force of the Florida constitutional amendment, the Commission's regulations would be the law of the state. The Florida courts follow the general principle (*supra*, p. 16)

that the rules of an administrative agency made under power conferred by statute have the force and effect of law. *Florida Livestock Board* v. *Gladden*, 76 So. 2d 291; *In re Briley Estate*, 155 Fla. 798, 21 So. 2d 595. Moreover, the Florida legislature has implemented the provisions of the Florida constitution relating to the Fish Commission by legislation empowering the Commission to exercise the power conferred upon it by the constitution and by making violations of the legislation a crime. Hence, even without the particular provisions of the constitutional Amendment, the regulations issued by the Commission pursuant to authority conferred by the legislature, and implemented by punitive legislation passed by the legislature, have the force and effect of law.

It follows that even on the theory of the District Court that a "law of the state" prohibiting the transportation of fish, as that term is used in the Black Bass Act, must be a law enacted by the legislature, it was error to dismiss this information. The Florida statute, 14 F. S. A. 372.83, provides: "Any person violating any rule, regulation or order of the game and fresh water fish commission adopted pursuant to Section 30, Art. IV, of the constitution of this state and this chapter shall be guilty of a misdemeanor." The Florida statute thus incorporates by reference Rule 14.01 of the Commission which prohibits the transportation of black bass. Certainly, it cannot be argued that this is not a law of Florida prohibiting transportation of black bass merely because the penalty is contained in the statute, while the express

prohibition, which the statute incorporates, is set forth in the regulation of the Commission. By penalizing the violation of the regulation, the statute adopts the regulation and prohibits the violation. The delivery of fish for the transportation alleged in the information was contrary to this statute, and thus contrary to the law of Florida; by the same token, the shipment in interstate commerce was a violation of the federal statute.

III. THE PURPOSE OF THE BLACK BASS ACT REQUIRES THAT "LAW OF THE STATE" BE INTERPRETED AS INCLUDING THE COMMISSION'S RULES

A. THE WORDS AND CONTEXT OF THE ACT REVEAL A PURPOSE TO AID AND SUPPLEMENT STATE CONSERVATION PROGRAMS

16 U. S. C. 852 forbids the transportation of black bass or other fish in interstate commerce if the transportation itself is forbidden by the state from which the bass is or is to be transported, or if it has been caught or killed, sold, bought, taken, possessed or transported at any time contrary to the law of the state in which it was caught, killed, taken, bought, sold or possessed or from which it was transported. 16 U. S. C. 854 provides that nothing in the Act shall be construed to prevent the states and territories from making or enforcing laws or regulations not inconsistent with the Act or from making or enforcing laws or regulations which shall give further protection to black bass and other fish. The statute is thus patently designed to furnish complete support for every conceivable effort by the individual states to regulate their fisheries resources in the area where state control is necessarily weakest, *i. e.*, interstate

activity. There is nothing in the language to suggest that the Act was designed solely to aid the comparatively few states (*infra,* pp. 31–33) still relying only on statutes for their conservation programs. Rather, the breadth of the statute's scope in support of the individual states' programs suggests the opposite—that it was made for all the states.

This conclusion is strengthened by reading the particular section here involved in the context of the whole Act and of the federal conservation program. 16 U. S. C. 852 is one paragraph in an "Act to Regulate Interstate Transportation of Black Bass," which constitutes Chapter 13 of Title 16 of the United States Code (entitled "Conservation"). Administration of the Act is made part of the duties of the Secretary of the Interior, and is effected through the Bureau of Wildlife of that Department. Section 852c authorizes the Secretary, *inter alia,* to make such regulations as he deems necessary to carry out the purposes of Chapter 13. Section 852d provides for enforcement by officers of the Department of Interior by arrests and searches and seizures. The Act is plainly to be administered in aid of state law regulating black bass. This is evident from the language of Section 852 itself as well as Sections 852b and 854, providing for application of state law on arrival in the state and for full power in the states to regulate black bass by "laws or regulations." Congress has thus entrusted the Act to administrative enforcement by an agency long established for similar related purposes, and empowered it to make regulations for the Act's enforcement. In this con-

text it would be strange indeed to say that a federal statute, itself enforced administratively, and designed to mesh with varied state treatment of the subject, meant to recognize as the "law of the state" only statutory enactments.

The whole subject of "Conservation," dealt with in the several chapters of Title 16, reveals the same scheme of implementation of the national program through the Interior Department in cooperation with state commissions. 16 U. S. C. 661 (Act of March 10, 1934, c. 55, Section 1, 48 Stat. 401, as amended, August 14, 1946, c. 965, 60 Stat. 1080) states:

> In order to promote effectual planning, development, maintenance, and coordination of wildlife conservation and rehabilitation in the United States, its Territories and possessions, the Secretary of the Interior, through the Fish and Wildlife Service, is authorized (a) to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat, in controlling losses of the same from disease or other causes, in minimizing damages from overabundant species * * *.

And 16 U. S. C. 669, Act of September 2, 1937, c. 899, Section 1, 50 Stat. 917, provides:

> The Secretary of the Interior is authorized to cooperate with the States, *through their respective State fish and game departments,* in wildlife-restoration projects as hereinafter in sections 669–669j of this title set forth; but no money apportioned under said sections to any

> State shall be expended therein *until its legislature, or other State agency authorized by the State constitution to make laws governing the conservation of wildlife,* shall have assented to the provision of said sections and shall have passed laws for the conservation of wildlife which shall include a prohibition against the diversion of license fees paid by hunters for any other purpose than the administration of said State fish and game department * * *. The Secretary of the Interior and the State fish and game department of each State accepting the benefits of said sections, shall agree upon the wildlife-restoration projects to be aided in such State under the terms of said section and all projects shall conform to the standards fixed by the Secretary of the Interior. [Emphasis added.]

This section obviously recognizes the fact that power over conservation of wildlife is customarily entrusted to administrative agencies set up under the constitution of the state, as in Florida, or under other state statutes.[2] It also recognizes the law-making powers of such agencies.

16 U. S. C. 705 (the Migratory Bird Treaty Act, Act of July 3, 1918, c. 128, Section 4, as amended (*infra*, pp. 51–52)) prohibits, *inter alia*, the interstate or foreign transportation of migratory birds where the bird has been taken or killed contrary to the laws of the state in which it was captured or taken.[3] Section

[3] It is paralleled by 18 U. S. C. 43 (*infra*, Appendix C, pp. 52–53), the so-called Lacey Act, which covers similar offenses with respect to both birds and animals. The adverse effects of the ruling below on the administration of both of these Acts, which parallel the Black Bass Act, is discussed *infra*, pp. 32–33.

3 of this Act, 16 U. S. C. 704, empowers the Secretary of the Interior to determine whether it is compatible with the terms of the conventions between the United States and Great Britain, and between the United States and Mexico, to allow, under proper circumstances, hunting, possession, sale, purchase, shipment or transportation of migratory birds, and it empowers the Secretary to make rules and regulations governing the same, these to become effective upon Presidential approval.

Thus, a large segment of the national conservation program is administered by rules and regulations of the Department of the Interior, and Congress has referred in its legislation on conservation to commissions as the depositaries of state power legislative in this field. The conclusion seems inevitable—in the context of the Black Bass Act itself and in the full context of the whole federal conservation legislation of Title 16—that Congress did not envisage statutory enactments as being the only laws of the states.

The consistent interpretation of the phrase "law of the state" by the Department of Interior, which, as we have shown, has been entrusted by Congress with the administration of the Bass Act, further supports the view that the phrase includes regulations of state commissions acting under lawfully delegated authority. While there has been found no specific interpretative ruling of the Department construing "law of the state", yet in practice the Department has sought prosecution of cases where the "law of the state" consisted of a regulation of a Commission.

Only 14 federal prosecutions under the Black Bass Act have occurred since 1940, because federal policy is to have violators prosecuted whenever possible under the state law. Three of these cases, however, were based on violations of rules of state commissions.[4]

This contemporaneous construction of the Act by those charged with its administration and with setting its machinery in motion is entitled to great weight, when such interpretation has been consistent and long unchallenged. *United States* v. *Zucca,* 351 U. S. 91, 96; *Mazer* v. *Stein,* 347 U. S. 201; *United States* v. *American Trucking Ass'ns.,* 310 U. S. 534, 549; *Norwegian Nitrogen Products Co.* v. *United States,* 288 U. S. 294, 315; *Fawcus Machine Co.* v. *United States,* 282 U. S. 375, 378; *Brewster* v. *Gage,* 280 U. S. 327, 336.

B. THE LEGISLATIVE HISTORY OF THE ACT ALSO INDICATES THAT ITS PURPOSE IS TO FURNISH COMPLETE SUPPORT FOR THE CONSERVATION PROGRAMS OF ALL THE STATES, IRRESPECTIVE OF THE TYPES OF LAWS USED TO IMPLEMENT THE PROGRAMS

The original Act of 1926 was limited to black bass. Both the Senate and House Reports accompanying the bill stated (S. Rep. No. 612, 69th Congress, 1st Sess.

[4] Under the companion Lacey Act, 18 U. S. C. 43, seventy-seven prosecutions have been had during the same period. Department reports do not show whether these were based on violations of State statutes or on violations of regulations. However, since the majority of the states regulate their birds and animal resources by commissions, it seems certain that a considerable percentage of these cases were based on violations of rules of commissions.

(1926), and H. Rep. No. 31, 69th Congress, 1st Sess. (1925)):

> It will strengthen the laws of any State wherein the taking of bass commercially is prohibited. In some States, where such law is now on the statute books, its effect is nullified by the fact that black bass are shipped out of the State in barrels, with rough fish at the top and bottom and the bass in between.
>
> A State which, for conservation purposes, denies for a limited period the sale of black bass to its own citizens frequently finds that its State enactments are nullified by bass being taken from the waters of its own State, where its commercial use is prohibited to its own citizens, and transported from that State and sold to the citizens of another State; thus destroying the State conservation program and giving to the citizens of another State the benefit of commercial consumption which is denied its own citizens.

A letter accompanying the committee reports on this bill, addressed to the Secretary of Commerce by the Commissioner of the Federal Bureau of Fisheries, and forwarded by the Secretary to the Committee, states:

> In such boundary waters as the Potomac River it has been especially difficult for the State authorities to control the situation. During the winter months when the bass are congregated together in the deeper waters in a more or less dormant condition it is not difficult for the fishermen to seine these fishes in such quantities as to seriously deplete the supply.

> If, as provided by the terms of this bill, their shipment out of States in which their sale is illegal is prohibited, better control over the natural supply will be possible.

Both reports mentioned also that the Act was modeled after the Lacey Act, originally passed in 1900, 31 Stat. 187, 188, which prohibited transportation of birds and animals killed or shipped in violation of the laws of the states in which they were killed or from which they were shipped.

The Black Bass Act was amended in 1930 to provide adequate machinery for enforcement (46 Stat. 845, S. Rep. No. 75, 71st Cong., 2d Sess.; H. Rep. No. 1610, 71st Cong., 2d Sess.). It was amended again in 1947, 61 Stat. 517, ~~to make~~ its provisions applicable to all game fish. A letter from the Under Secretary of the Interior accompanying the reports again noted that existing legislation (the Lacey Act) made unlawful the interstate transportation of wild animals and birds taken contrary to state laws, and that the only legislation with respect to game fish covered only one species, namely, black bass.

The basic purpose of the Act was reiterated in the reports accompanying the 1947 amendatory bill:

> The bill is intended to supplement State laws applying to protection of game fish. * * * State laws become ineffectual when fish taken in violation of the law cross the State line. If we are to protect game fish, an important natural resource, the Federal Government must collaborate in the enforcement of protective

laws and regulations at the point where State jurisdiction ends.[5]

In 1952, the Act was again amended to extend its provisions to commercial as well as game fish. 66 Stat. 736; see H. Rep. 2148, 82nd Cong., 2d Sess.

Even if it were arguable that the Congress speaking in 1926—an earlier day in the history of administrative law[6]—did not intend to include administrative regulations in the expression "law of the state", still it is certain that by the time of the 1947 and 1952 amendments only in comparatively few states did the law-making power in this field remain solely vested in the legislature. See *infra*, pp. 31–32. Yet in these amendments Congress still used the generic term "law", and in the report accompanying the 1947 bill, *supra*, pp. 29–30, it was stated that "the Federal Government must collaborate in the enforcement of protective laws and *regulations* at the point where state jurisdiction ends." [Emphasis added.]

This history of the Black Bass Act shows conclusively that it was designed to buttress the lawmaking power of the states with respect to forbidden types of use of their fish resources—including, as here, forbidden commercial uses—at the point where such state power is weakest. There is no evidence of Con-

[5] S. Rep. No. 288, 80th Cong., 1st Sess.; H. Rep. 986, 80th Cong., 1st Sess. At this time, the phrase "or is contrary to other applicable law" was added to make the provisions of the Act operative to fish transported in violation of laws governing national parks and Indian reservations.

[6] Of course, in the field of wild life conservation, the federal government itself had been active, through regulations of the Department of the Interior, prior to this time.

gressional concern with the question whether the state power was directly exercised by statute or through administrative regulations based on statutes. The only objective was to aid the enforcement of state provisions protecting fish resources.

C. THE STATUTORY PURPOSE WOULD BE DEFEATED AND ALL BUT NULLIFIED UNDER THE NARROW CONSTRUCTION ADOPTED BY THE DISTRICT COURT

There are relatively few states which continue to regulate wildlife through detailed legislative enactments; the large majority of the states now place authority for the regulation of their fish and game resources in commissions. The Department of the Interior, through its acting Director of the Fish and Wildlife Service, has forwarded to us a study made by the Sport Fishing Institute as published in its Bulletin No. 26, issued January 1954, on the administration and functions of state fish commissions.[7] The study reveals that full regulatory authority is vested in twenty-eight (28) states in commissions.

[7] The Director advises that the Fish and Wildlife Service has never had occasion to make a detailed analysis of the fish and game laws of the several states. In forwarding the Bulletin, the Director noted that information concerning the organization and functions of the Sport Fishing Institute was contained in the same issue of the Bulletin. The Bulletin states that the Institute was founded by fishing tackle manufacturers and set up as a fish conservation agency, managed by trained conservationist personnel, and having complete freedom of action. The Director states that the Institute is "highly regarded among professional fisheries workers because of its altruistic objectives, the technical competence of its staff and the timely, forthright presentation of the information contained in the periodical issues of its Bulletin and other publications."

In twelve states, commissions share the responsibility with the legislatures. In only six states out of the forty-eight, is full regulatory authority reserved to the legislatures. Of the other two, one state vests its authority entirely in an administrative official although exercised in practice in close cooperation with the commission; in the other, the authority is divided between the administrative official and the legislature, the commission being advisory only.[8]

Under the narrow interpretation adopted here by the District Court, very few states would be able to take advantage of the buttressing of their fish conservation laws which the Black Bass Act was designed to effect. Such a result, largely destructive of the prime purpose of the legislation, calls for a rejection of the interpretation which would bring it about. At the least, it would seem that very specific restrictive language would have to appear in the statute to necessitate a reading so at war with the statutory purpose.

Moreover, the confining interpretation of the district court would affect more than the conservation of fish. 18 U. S. C. 43 (*infra,* App. C, p. 52) penalizes, *inter alia,* the delivery or reception for transportation in

[8] An earlier (1948) analytical chart showing the administrative and functional status of state fish and game departments, compiled by the Wildlife Management Institute, corroborates the Sport Fishing Institutes study where comparable. Read together, they show a trend to vest more authority in commissions, with a corresponding decrease in the number of states regulating wildlife directly by their legislatures. The government's information is that the Wildlife Management Institute is similar in organization and objectives to the Sport Fishing Institute.

interstate or foreign commerce of wild animals or birds captured, killed, bought, sold or possessed contrary to any Act of Congress or the law of any state, territory, possession or foreign country. And the Migratory Bird Treaty Act of July 3, 1918, c. 128, Section 4, 40 Stat. 755, 16 U. S. C. 705, as amended, *infra*, Appendix C, pp. 51–52, penalizes the transportation in interstate or foreign commerce, of any bird captured, killed, shipped, transported or carried at any time contrary to the laws of the state, territory or district in which it was captured or killed, or from which it was shipped, transported or carried. As we have just pointed out, *supra*, pp. 31–32, most of the states regulate their fish and game resources through commissions, and the states in which regulation is solely by statutory enactment are a small minority. Under the reasoning of the court below, there would be few state "laws" within the meaning of that expression as used in these two statutes.

IV. THERE IS NOTHING IN THE ADMINISTRATION OF THE RULES OF THE COMMISSION WHICH WOULD MAKE IT A VIOLATION OF DUE PROCESS TO RECOGNIZE THOSE RULES AS THE LAW OF THE STATE

In her Motion to Dismiss or Affirm, appellee argued (pp. 9, 10) that the Commission's regulations, as administered under the machinery prescribed, deny a reasonable opportunity to know the law, and that the federal criminal statute should not be based upon "an arbitrary, vacillating, and varying rule."

That contention does not go to the issue involved in this appeal which is confined to the question of

whether the term "law of the State", as used in the Black Bass Act, includes regulations of a constitutionally-created commission which, under the state constitution and by state judicial decision, are recognized as being the binding law of the state. Whether any particular method of procedure or a rule adopted by a state commission violates due process is an entirely different question, not involved in this appeal. If petitioner has a basis for attacking the validity of the state rule as a foundation for a federal prosecution, that is an issue to be determined in subsequent stages of the proceedings. It is not the question now before this Court. See Point I, *supra,* pp. 11–12.

In any event, petitioner's argument is without foundation. The rule in question, Rule 14.01, was adopted when the Commission was formed in 1943 by the Florida constitutional amendment. From 1927 to 1943 the transportation of black bass was forbidden by statute of Florida.[9] Thus there has never been any change in the Florida law on the subject during its twenty-nine year history.

Appellee's speculation on possible rapid or arbitrary change of the rule is answered fully by the very adequate machinery provided by the legislature for promulgation of the Commission's rules. Section 372.021 of the Florida Statutes Annotated provides for promulgation of the rules of the Commission as follows:

> (1) All general codes of rules, regulations and orders, and all revisions thereof and amend-

[9] As noted *supra*, p. 7, this statute (Fla. Stat. 1941, Section 372.29) was repealed in 1951.

ments and additions, thereto, of state-wide application, made and adopted by the commission shall be promulgated by the director of the commission, by filing a certified copy thereof in the office of the secretary of state of this state and a certified copy thereof in the office of each county judge of this state, and by the publication of a notice one time in each of the congressional districts of the state in a newspaper published in and having general circulation in such district, notifying and advising the people of the state such code of rules, regulations and orders, or revisions, amendments or additions thereto, have been made and adopted by the commission and a certified copy thereof is on file in the office of the secretary of state and also in the office of each county judge in the state, and a copy thereof may be obtained from the commission at its office in Tallahassee.

(2) Such general code of rules, regulations and orders, and all revisions, amendments and additions thereto, shall become effective thirty days after the filing of a certified copy in the office of the secretary of state.

(3) All rules, regulations and orders, and all revisions thereof and amendments and additions thereto, of less than state-wide application, made and adopted by the commission, shall be filed in the office of the secretary of state and notice thereof shall be published by the director of the commission, one time in a newspaper of general circulation published in the area or areas affected by such rule or regulation, within ten days from the date of the adoption thereof. Such rules, regulations and

orders, and all revisions thereof and amendments and additions thereto shall become effective twenty days after being filed in the office of the secretary of state, and by publication as aforesaid the director of game and fresh water fish commission shall give notice such rules and regulations, and revisions thereof and amendments and additions thereto, have been adopted and may be obtained by all interested persons from the county judges of the counties within the areas affected, or from the office of the commission in Tallahassee.

(4) A copy of all rules, regulations and orders and codes of rules, regulations and orders, and all revisions, amendments and additions thereto, whether of state-wide or limited application, shall be certified by the director of game and fresh water fish commission and shall be filed with the secretary of state within ten days after the adoption thereof, and in addition thereto, the said director shall, within the said ten-day period, file in the office of each county judge of this state a true and correct copy of all rules, regulations and orders and all revisions, amendments and additions thereto. A copy of said rules, regulations and orders, and revisions, amendments and additions thereto, or any portion or portions thereof, certified by the secretary of state under the great seal of the State of Florida, or by the director of the game and fresh water fish commission under the seal of the commission, shall be received as evidence in all courts of this state without further authentication; provided, nothing herein shall be con-

> strued as preventing or prohibiting the courts from taking judicial knowledge thereof.
>
> (5) The provisions of subsections 1, 3 and 4 relating to promulgation and filing are directory and not mandatory.

The Director of the Game and Fresh Water Fish Commission of Florida has advised, in response to the government's inquiry, that any person making a request will be supplied with a copy of the Code Book, together with all existing amendments thereto which have been approved since the last printing of the book.[10]

Furthermore, it is evident from the amounts charged in this information that appellee is a commercial dealer in fish.[11] As such, she was required to be licensed under Section 372.65, Florida Statutes Annotated, as amended (*infra*, pp. 46–47). The form of license, photostatic copies of which are being lodged with the Clerk of the Court, carries the legend:

> It is unlawful for any wholesale or retail fish dealer knowingly to have or allow or permit any black bass to be stored on, in or about the premises where such wholesale or retail business is carried on or conducted.

The license also states that a holder engaged in the taking of fish must hold a valid fishing license. Sec-

[10] Two copies of the Code Book which were forwarded to the Department from the Florida Commission, certified as true copies of the Rules of the Commission and dated June 29, 1956 (see p. 92 of Code Book), together with amendments certified on July 17, 1956, are being lodged with this Court.

[11] The Director of the Florida Game and Fresh Water Fish Commission advises that wholesale fish dealer's licenses have been issued to Stokes Fish Co. for a number of years.

tion 372.69, Florida Statutes Annotated, *infra*, pp. 47–48, requires that such licenses shall contain on the back thereof a synopsis of the fresh water fishing laws of the state.

In short, no one interested in obeying the law would have any difficulty in discovering the applicable regulations.[12]

CONCLUSION

For these reasons, it is respectfully submitted that the judgment of the District Court should be reversed.

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AUGUST 1956.

[12] Violation of the regulation here involved is a crime under the laws of Florida. As shown above (pp. 21–22), Section 372.83, Florida Statutes Annotated (Laws 1943, c. 21945, Section 6 as amended), makes violators of the rules of the Commission guilty of a misdemeanor, and Rule 14.01 forbids transportation of black bass. Hence, the transportation charged in this information was clearly a violation of state law and therefore a violation of the Black Bass Act.

APPENDIX A

1. 18 U. S. C. 3731 provides in pertinent part:

> An appeal may be taken by and on behalf of the United States from the district courts direct to the Supreme Court of the United States in all criminal cases in the following instances:
>
> From a decision or judgment setting aside, or dismissing any indictment or information, or any count thereof, where such decision or judgment is based upon the invalidity or construction of the statute upon which the indictment or information is founded.

* * * * *

2. The Black Bass Act of May 20, 1926, c. 346, Section 1 through 8, 44 Stat. 576, as amended, 46 Stat. 845, 61 Stat. 517, 66 Stat. 736, 16 U. S. C., ch. 13, provides:

> Section 1. [16 U. S. C. 851] When used in this chapter the word "person" includes company, partnership, corporation, association, and common carrier.
>
> Section 2. [16 U. S. C. 852] It shall be unlawful for any person to deliver or knowingly receive for transportation, or knowingly to transport, by any means whatsoever, from any State, Territory, or the District of Columbia, to or through any other State, Territory, or the District of Columbia, or to or through any foreign country, any black bass or other fish, if (1) such transportation is contrary to the law of the State, Territory, or the District of Columbia from which such black bass or other fish is or is to be transported, or is contrary to other applicable law, or (2) such black bass or other fish has been either caught, killed, taken,

sold, purchased, possessed, or transported, at any time, contrary to the law of the State, Territory, or the District of Columbia in which it was caught, killed, taken, sold, purchased, or possessed, or from which it was transported or contrary to other applicable law; and no person shall knowingly purchase or receive any such black bass or other fish which has been transported in violation of the provisions of this chapter; nor shall any person receiving any shipment of black bass or other fish transported in interstate commerce make any false record or render a false account of the contents of such shipment.

Section 3. [16 U. S. C. 852a] Any package or container containing such game fish transported or delivered for transportation in interstate commerce, except any shipment covered by section 855 of this title, shall be clearly and conspicuously marked on the outside thereof with the name "Fish", an accurate statement of the number of each species of such fish contained therein, and the names and addresses of the shipper and consignee.

Section 4. [16 U. S. C. 852b] All such black bass or other fish transported into any State, Territory, or the District of Columbia for use, consumption, sale, or storage therein shall upon arrival in such State, Territory, or the District of Columbia be subject to the operation and effect of the laws of such State, Territory, or the District of Columbia to the same extent and in the same manner as though such fish had been produced in such State, Territory, or the District of Columbia, and shall not be exempt therefrom by reason of being introduced therein in original package or otherwise.

Section 5. [16 U. S. C. 852c] The Secretary of the Interior is authorized (1) to make such expenditures, including expenditures for personal services at the seat of government and elsewhere, and for cooperation with local, State,

and Federal authorities, including the issuance of publications, and necessary investigations, as may be necessary to execute the functions imposed upon him by this chapter and as may be provided for by Congress from time to time; and (2) to make such regulations as he deems necessary to carry out the purposes of this chapter. Any person violating any such regulation shall be deemed guilty of a violation of this chapter.

Section 6. [16 U. S. C. 852d] (a) Any employee of the Department of the Interior authorized by the Secretary of the Interior to enforce the provisions of this chapter (1) shall have power, without warrant, to arrest any person committing in the presence of such employee a violation of this chapter or any regulation made in pursuance of this chapter, and to take such person immediately for examination or trial before an officer or court of competent jurisdiction; (2) shall have power to execute any warrants or other process issued by an officer or court of competent jurisdiction to enforce the provisions of this chapter or regulations made in pursuance thereof; and (3) shall have authority with a search warrant issued by an officer or court of competent jurisdiction, to make search in accordance with the terms of such warrant. Any judge of a court established under the laws of the United States, or any United States commissioner may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.

(b) All fish delivered for transportation or which have been transported, purchased, received, or which are being transported, in violation of this chapter, or any regulations made pursuant thereto, shall, when found by such employee or by any marshal or deputy marshal, be summarily seized by him and placed in the custody of such persons as the Secretary

of the Interior shall by regulations prescribe, and shall, as a part of the penalty and in addition to any fine or imprisonment imposed under section 853 of this title, be forfeited by such court to the United States upon conviction of the offender under this chapter, or upon judgment of the court that the same were transported, delivered, purchased, or received in violation of this chapter or regulations made pursuant thereto.

Section 7. [16 U. S. C. 853] In addition to any forfeiture provided in this chapter, any person who shall violate any of the provisions of this chapter shall, upon conviction thereof, be punished by a fine of not exceeding $200, or imprisonment for a term of not more than three months, or by both such fine and imprisonment, in the discretion of the court.

Section 8. [16 U. S. C. 854] Nothing in this chapter shall be construed to prevent the several States and Territories from making or enforcing laws or regulations not inconsistent with the provisions of this chapter, or from making or enforcing laws or regulations which shall give further protection to black bass and other fish.

APPENDIX B

Article IV, Section 30, of the Constitution of Florida, provides in pertinent part:

> § 30. *Game and fresh water fish commission; term; compensation; powers; director; state game fund.*
>
> 1. From and after January 1, 1943, the management, restoration, conservation and regulation of the birds, game, fur bearing animals, and fresh water fish of the State of Florida, and the acquisition, establishment, control and management, of hatcheries, sanctuaries, refuges, reservations, and all other property now or hereafter owned or used for such purposes by the State of Florida, shall be vested in a Commission to be known as the Game and Fresh Water Fish Commission. Such Commission shall consist of five members, one from each congressional district, as existing on January 1, 1941, who shall be appointed by the Governor, subject to confirmation by the Senate. The members so appointed shall annually select one of their members as Chairman of the Commission.
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> * * * * *
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> 4. Among the powers granted to the Commission by this Section shall be the power to fix bag limits and to fix open and closed seasons, on a state-wide, regional or local basis, as it may find to be appropriate, and to regulate the manner and method of taking, transporting, storing and using birds, game, fur bearing animals, fresh water fish, reptiles, and amphibians. The Commission shall also have the power to acquire by purchase, gift, all property necessary, useful, or convenient, for

the use of the Commission in the exercise of its powers hereunder.

* * * * *

7. The Legislature may enact any laws in aid of, but not inconsistent with, the provisions of this amendment, and all existing laws inconsistent herewith shall no longer remain in force and effect. All laws fixing penalties for the violation of the provisions of this amendment and all laws imposing license taxes, shall be enacted by the Legislature from time to time. [Added, general election, 1942.]

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14 Florida Statutes Annotated, Section 372.021, Laws 1943, c. 21945, Sections 4 and 5, provide in pertinent part:

> The game and fresh water fish commission may exercise the powers, duties and authority granted by § 30, article IV, of the constitution of Florida, by the adoption of rules, regulations and orders, or otherwise in its discretion, which said rules, regulations and orders shall be promulgated in the manner following:
>
> (1) All general codes of rules, regulations and orders, and all revisions thereof and amendments and additions thereto, of statewide application, made and adopted by the commission shall be promulgated by the director of the commission, by filing a certified copy thereof in the office of the secretary of state of this state and a certified copy thereof in the office of each county judge of this state, and by the publication of a notice one time in each of the congressional districts of the State of Florida in a newspaper published in and having general circulation in such district, notifying and advising the people of the State of Florida such code of rules, regulations and orders, or revisions, amendments or additions thereto, have been made and adopted by the commission and

a certified copy thereof is on file in the office of the secretary of state and also in the office of each county judge in the state, and a copy thereof may be obtained from the commission at its office in the City of Tallahassee, Florida.

(2) Such general code of rules, regulations and orders, and all revisions, amendments and additions thereto, shall become effective thirty days after the filing of a certified copy in the office of the secretary of state.

(3) All rules, regulations and orders, and all revisions thereof and amendments and additions thereto, of less than statewide application, made and adopted by the commission, shall be filed in the office of the secretary of state and notice thereof shall be published by the director of the commission, one time in a newspaper of general circulation published in the area or areas affected by such rule or regulation, within ten days from the date of the adoption thereof. Such rules, regulations and orders, and all revisions thereof and amendments and additions thereto shall become effective twenty days after being filed in the office of the secretary of state, and by publication as aforesaid the director of game and fresh water fish commission shall give notice such rules and regulations, and revisions thereof and amendments and additions thereto, have been adopted and may be obtained by all interested persons from the county judges of the counties within the areas affected, or from the office of the commission in Tallahassee, Florida.

(4) A copy of all rules, regulations and orders and codes of rules, regulations and orders, and all revisions, amendments and additions thereto, whether of state-wide or limited application, shall be certified by the director of game and fresh water fish commission and shall be filed with the secretary of state within ten days after the adoption thereof, and in addition thereto, the said director shall, within

the said ten-day period, file in the office of each county judge of this state a true and correct copy of all rules, regulations and orders and all revisions, amendments and additions thereto. A copy of said rules, regulations and orders, and revisions, amendments and additions thereto, or any portion or portions thereof, certified by the secretary of state under the great seal of the State of Florida, or by the director of the game and fresh water fish commission under the seal of the commission, shall be received as evidence in all courts of this state without further authentication; provided, nothing herein shall be construed as preventing or prohibiting the courts from taking judicial knowledge thereof.

(5) The provisions of subsections (1), (3) and (4) relating to promulgation and filing are directory and not mandatory.

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14 Florida Statutes Annotated, Section 372.83, Laws 1943, c. 21945, Section 6, as amended, provides:

> Any person violating any rule, regulation or order of the game and fresh water fish commission adopted pursuant to § 30, article IV, of the constitution of this state and this chapter shall be guilty of a misdemeanor.

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14 Florida Statutes Annotated, Section 372.65, Laws 1929, c. 13644, Section 31, as amended, Laws 1955, c. 29615, Section 7, provides:

> No person shall engage in the business of wholesale or retail fresh-water fish dealer until such person has taken out a license to carry on such business, as provided for in this chapter. A wholesale dealer shall be considered one who sells or ships fish by the barrel or

half barrel, or in bulk, and shall be required to pay a license fee of fifty dollars per annum. A retail dealer shall be considered anyone who sells fish or supplies in any manner direct to the consumer or wholesale dealer, and shall pay a license fee of five dollars per annum; a non-resident [wholesale] dealer shall be required to pay a license fee of five hundred dollars per annum, a non-resident or alien retail dealer shall be required to pay a license fee of fifty dollars per annum. Application shall be made to the commission of game and fresh water fish for the licenses set forth in this section and § 372.66, on blank forms to be supplied by it, and such license shall be dated and issued only for the open season and all moneys derived from this source shall be deposited in the state treasury to the credit of the state game fund. This does not apply to dealers operating exclusively in salt water territory.

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14 Florida Statutes Annotated, Section 372.68, Laws 1929, c. 13644, Section 63, provides:

All dealers in fresh-water fish shall, at the end of each month, report to the commission of game and fresh water fish the amount of the different kinds of fresh-water fish that they have sold during the past month. Failure to make such report shall cause such dealer to be denied license for ensuing year.

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14 Florida Statutes Annotated, Section 372.69, Laws 1929, c. 13644, Section 22, as amended Laws 1955, c. 29615, Section 33, provides:

The blank forms and other printed matter necessary to carry out the provisions of this chapter shall be furnished by the commission of game and fresh water fish, which is required

to make up forms of licenses or other blanks necessary, the same to be uniform throughout the state, and to furnish the same to the county judges of the several counties and authorized agents. The said license shall contain on the back thereof a synopsis of the game trapping or fresh water fishing laws of the State. All licenses shall be consecutively numbered.

Rule 14.01 of the Rules and Regulations of the Game and Fresh Water Fish Commission of Florida provides:

No person or persons shall sell, attempt to sell, offer for sale, barter, purchase, offer to purchase, attempt to purchase, or exchange for merchandise or transport, transport for sale, or transport out of the State of Florida any large or small mouth black bass, speckled perch, jack, shell cracker, warmouth perch, red breast, pike, stump knocker, sun fish, or Canadian sunfish, or any other species of bream; provided, that holders of valid fishing licenses may carry out of the State or transport as personal baggage their legal bag limit thereof; and provided further that the Director may issue permits for transportation of black bass, speckled perch, jack, bream, shell cracker, warmouth perch, red breast, pike, stump knocker, or any other species of bream within or out of the State of Florida for propagation or scientific purposes only. No common carrier shall knowingly transport or receive for transportation within the State of Florida any black bass, speckled perch, jack, bream, shell cracker, warmouth perch, red breast, pike, stump knocker, or any other species of bream. It is the intention of this Rule to prohibit within the limits of the State of Florida the sale, transportation and/or shipment of any species of fresh water game fish indigenous to the waters of the State of

Florida, as well as other fresh water game fish the sale or offering for sale of which would impede or interfere with the enforcement of the Rules and Regulations of the Commission with respect to the taking, possession and the sale of fresh water game fish of the same or apparently the same species, whether such fresh water game fish were caught from the waters within the State of Florida or elsewhere, except as otherwise provided in the Rules.

Rule 3.06 of the Rules and Regulations of the Game and Fresh Water Fish Commission of Florida provides in pertinent part:

* * * * *

The following licenses are considered Commercial Licenses and are issued direct from the office of the Director of the Game and Fresh Water Fish Commission in Tallahassee, Florida. All commercial licenses shall expire on June 30 of the fiscal year during which they are issued.

* * * * *

No person shall engage in the business of wholesale or retail fresh water fish dealer without having first obtained license and paid the license fee required by law. Rights and privileges under said licenses shall be as hereinafter set out.

* * * * *

All residents of the State who shall obtain license for fee provided by law, who sell or ship fish by the half barrel, barrel or in bulk, shall be deemed to be Resident Wholesale Dealers.

* * * * *

* * * All agents representing Resident or Non-Resident Retail or Wholesale Fish Dealers shall be in possession of the license or positive

proof that such license has been issued and is valid and in good standing.

Rule 11 of the Rules and Regulations of the Game and Fresh Water Fish Commission of Florida provides in pertinent part:

* * * * *

It shall be unlawful for any wholesale or retail fish dealer knowingly to have or allow or permit any black bass, bream, crappie, or any other game fish to be stored on, in or about the premises where such wholesale or retail fish business is being carried on or conducted. Fish legally caught may be kept in public cold storage, refrigerators, ice houses or ice boxes when packaged or on strings with tag or tags clearly identifying the owner of such fish, and his license number clearly written thereon, if license is required therefor.

APPENDIX C

1. The Migratory Bird Treaty Act of July 3, 1918, c. 128, Section 4, 40 Stat. 755, as amended, 49 Stat. 1556, 53 Stat. 1433, provides in pertinent part:

> It shall be unlawful to ship, transport, or carry, by any means whatever, from one State, Territory, or District to or through another State, Territory, or District, or to or through a foreign country, any bird, or any part, nest, or egg thereof, captured, killed, taken, shipped, transported, or carried at any time contrary to the laws of the State, Territory, or District in which it was captured, killed, or taken, or from which it was shipped, transported, or carried. It shall be unlawful to import any bird, or any part, nest, or egg thereof, captured, killed, taken, shipped, transported, or carried contrary to the laws of any Province of the Dominion of Canada in which the same was captured, killed, or taken, or from which it was shipped, transported, or carried.

2. 18 U. S. C. 43 provides:

> Whoever delivers or knowingly receives for shipment, transportation, or carriage in interstate or foreign commerce, any wild animal or bird, or the dead body or part thereof, or the egg of any such bird imported from any foreign country, or captured, killed, taken, purchased, sold, or possessed contrary to any Act of Congress, or the law of any State, Territory, Possession, or foreign country, or subdivision thereof; or
>
> Whoever transports, brings, or conveys from any foreign country into the United States any wild animal or bird, or the dead body or part thereof, or the egg of any such bird captured,

killed, taken, shipped, transported, or carried contrary to the law of such foreign country or subdivision thereof; or

Whoever knowingly purchases or receives any wild animal or bird, or the dead body or part thereof, or the egg of any such bird imported from any foreign country or shipped, transported, carried, brought, or conveyed in violation of this section; or

Whoever, having purchased or received any wild animal or bird, or the dead body or part thereof, or the egg of any such bird imported from any foreign country or shipped, transported, or carried in interstate commerce, makes any false record or account thereof; or

Whoever imports from or exports to Mexico any game mammal, dead or alive, or parts or products thereof, except under permit or authorization of the Secretary of the Interior, in accordance with regulations issued by him and approved by the President—

Shall be fined not more than $500 or imprisoned not more than six months, or both; and the wild animals or birds, or the dead bodies or parts thereof, or the eggs of such birds, shall be forfeited.

3. 18 U. S. C. 44 provides:

Whoever ships, transports, carries, brings or conveys in interstate or foreign commerce any package containing wild animals or birds, or the dead bodies or parts thereof, without plainly marking, labeling, or tagging such package with the names and addresses of the shipper and consignee and with an accurate statement showing the contents by number and kind; or

Whoever ships, transports, carries, brings or conveys in interstate commerce, any package containing migratory birds included in any convention to which the United States is a party, without marking, labeling, or tagging

such package as prescribed in such convention, or Act of Congress, or regulation thereunder; or

Whoever ships, transports, carries, brings or conveys in interstate commerce any package containing furs, hides, or skins of wild animals without plainly marking, labeling, or tagging such package with the names and addresses of the shipper and consignee—

Shall be fined not more than $500 or imprisoned not more than six months, or both; and the shipment shall be forfeited.

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